

## The Legal Certainty of Execution of the Death Penalty in Indonesian Criminal Justice System

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ARTICLE INFO	ABSTRACT
<p><i>Keywords:</i> Legal Certainty, Death Penalty, Execution, The Criminal Justice System</p> <hr/> <p>Corresponding Author: lilik_mulyadi@yahoo.com</p>          <p>The Southeast Asia Law Journal Volume 1 Nomor 1 Juli-Desember 2015 ISSN. 2477-4081 hh. 33-44</p>	<p><i>This study aims to answer three main problems, namely: (1) How the provisions of the deadline for execution on the death row prisoners in the Indonesian justice system?; (2) What method of execution on death row prisoners in the Indonesian justice system?; and (3) How is the policy of capital punishment in Indonesia in the future?. This research uses the primary, secondary and tertiary legal materials. The research methods being used in this research is normative method with the application of the statute approach, the case approach and the comparative approach. The results of this study shows the following conclusions: (1) the criminal law system in Indonesia is not set the deadline for execution on death row prisoner who had obtained a court decision that is legally binding and or the clemency petition has been rejected signal by the president; (2) The method of execution that has been implemented in Indonesia is a method of firing squad the u.s. stipulated in Law No. 2/Pnps/1964; (3) The policy the SE for the death penalty law in Indonesia in the future will not be shifted away from the current state.</i></p>

## INTRODUCTION

The Code Penal means as controlling public order and security that provides a legitimate basis for the state's repressive action against a person or group of persons who commit acts defined as a crime or offense. The death penalty is one of the criminal law sanctions are still embraced, managed and implemented by the countries in the world including the modern law of the Republic of Indonesia

Article 28i paragraph (1) of the second amendment of the 1945 Constitution states that "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances". A formal judicial, application of the capital punishment in Indonesia is indeed justified. This can be traced from several articles in the Code of Criminal Law (Criminal Code), which contains the threat of capital punishment. Outside the Criminal Code, noted there are at least six (6) legislation which has the penalty of death, among other things Narcotics Act, the Law on Anti-Corruption, Anti-terrorism Act, the Human Rights Court Act, the Law on Intelligence and the Act State Secrets.

The application of capital punishment in Indonesia was practiced in the context of very serious crimes. The imposition of the death penalty is not imposed on the indiscriminate criminal, but specifically to the perpetrators of a specific crime (extraordinary crime) which is considered the culprit very dangerous for society and therefore must be made not dangerous again with ways excluded from society or social life, which is sentenced to death (Marpaung, 2005).

The implementation of the capital punishment in Indonesia has caused problems, particularly in relation to the process of the execution, when and where implemented, and how the process is goes. The problem occurs because Indonesia does not have regulations governing the deadline for execution on death row. Case Kusni Kasdut and Hengky Tupanawaei are awaiting execution for about 25 years, the case Sumiarsih, Sugeng (executed in East Java) awaiting execution for 20 years in prison and Tubagus Maulana Yusuf aka Shaman Usep (executed in Lebak Banten) pending executions for a year in prison.

The above data shows that quite a lot of death row inmate who had to wait for years (death row) before

being executed. Moreover, many current death row inmate who is filing a legal remedy such as judicial review or clemency and executed prisoners who had been sentenced to death but is still waiting for the execution of death is uncertain. The Attorney General (2006) states that after the execution of Tibo and others., The total number of death row inmates in the prosecutor's office in Indonesia there are 89 (eighty nine) and which has been declared final and legally binding (legally binding) there are 8 (eight).

Contrast report (2007), there are 118 people who are still waiting for the executions, despite the appeal, judicial review or clemency filed by most of them have been rejected. That is, although the PK and pardon death row has been rejected, but the execution was not carried out in the same year and/or is not known exactly when it will be implemented execution. Such conditions have created legal uncertainty for the death row inmates. Postponement of executions is a form of "rape" of the rights and disregard for the suffering experienced by the person sentenced to death.

Determination of the procedure or mechanism for the implementation of capital punishment formalized in Presidential Decree No. 2 of 1964 and noted in the Official Gazette No. 38. Presidential Decree 1964 was then enacted on April 27, of 1964 through Law No. 2/Pnps/1964, and then set into Act No. , 5 Year 1969. Presidential Decree No. 2 of 1964 has been set on the technical problems process execution, among others: the method of execution, where the inmate will be convicted by firing squad, time and location of execution; who is entitled to attend the execution by firing squad; Team shooter; preparation of implementation; execution; and post execution.

The criminal justice just look at the structural aspects, namely the "system of court" as an institution and only see the aspect of the judge/settlement to the case (justice administration/mechanism for the resolution of Disputes). As the criminal justice system includes two aspects, namely institutional structure involving several law enforcement agencies and aspects of value, namely the principles of criminal law enforcement covered by due process of law. The interaction between law enforcement agencies in the justice process mechanism includes a chain of authority of the criminal justice system.

Based on these problems, it can be formulated several research problems as follows: 1) How does the provision of the deadline for execution on death row in the Indonesian justice system ?; 2) How does the

method of execution on death row in the Indonesian justice system ?; and 3) What is the policy direction of capital punishment in Indonesia in the future?.

## CODE PENAL

The penalty is universal response to crimes and irregularities in all societies (Miethe and Lu, 2005). Prodjodikoro (2008) says that the purpose of criminal law is to fulfill a sense of justice. Simons in Remmelink (2003), the criminal law is a rule that is part of the positive that contains prohibitions and other imperatives are determined by the state or other competent authority to determine the rules of the criminal; prohibition or requirement which is accompanied by the threat of criminal and arises when it violated the rights of the state to prosecute, execute and implement criminal punishment.

Schaffmeister, et al., (2007) states that a law has the function of setting norms if the norms are set in accordance with the prevailing social norms. Serves as a The law norm creation of, known as social engineering is expected to establish and/or change a society to conform to the expectations and ideals of the law, or briefly said that the legal functions are closely related to social change (McManaman, 1958).

Within the framework of the legal function, Vago (1991) suggested the advantages and disadvantages that may be encountered when using the law as a means to social changes. Vago said three (3) main advantages, namely: (1) legitimate authority; (2) the binding force of law; and (3) sanction. While the loss (disadvantages) is that the law has very limited capacity due to: (1) law as a policy instrument; and (2) morality and values.

Remmelink (2003) states that the positive criminal law (*ius poenale*) include the following: (1) commands and prohibitions on violations against him by the organs that otherwise authorized by statute linked (the threat of) criminal (norms that must be obeyed by anyone); (2) provisions which establish the means anything that can be utilized as a reaction to violations of the norms of the (legal penitensier or wider law on sanctions); (3) rules that temporally or in a certain period of time set limits on the scope of work of norms.

Countries that retain capital punishment (retentionists) totaled 58, namely Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica , Egypt, Equatorial Guinea, Ethiopia, Gam-

bia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States Of America , Vietnam, Yemen, Zimbabwe (Amnesty International, 2003).

According to the Death Penalty Information Center (2014), the United States recognizes the five methods of execution, the lethal injection, the electrocution, gas chamber, the hanging, and shooting. Here are five methods of execution imposed on federal states as released by the US Bureau of Justice Statistics (Bureau of Justice Statistics) in 2011. The method of execution imposed by the Chinese Government is the method of lethal injection and firing squad. This method is carried out in prison or in a car "death van" carry on using the "death van" has been declining since the late 2000s because of the maintenance costs of the van. While the method of shooting to death must be stopped in 2010 by the People's Supreme Court decision in February 2009. It appears that China assume that lethal injection is more humane form of execution than firing squad (Death Penalty Worldwide, 2014).

While the method of execution imposed by the Malaysian government is hanging. Although the global trend led to the restriction and abolition of capital punishment, the death penalty mandatory for the crime of drug trafficking, murder, certain firearms violation and betrayal, remains a positive law in Malaysia. According to Hood (2013), the automatic nature of this punishment in various parts of the world considered as arbitrary and disproportionate by reason of failure to take into account the different conditions in which a violation can be done and the different characteristics of the perpetrators, especially considering mitigating factors.

In Indonesia provisions concerning the capital punishment in the Criminal Code in force today, when compared with the setting of the death penalty in the Criminal Code draft a more detailed and complete. The fundamental change of capital punishment provision is made for execution as punishment of a special nature. The provisions concerning the capital punishment is formulated specifically to pursue a selective application for a criminal offense punishable by capital punishment. However, the special nature of this selective application should be

disputed considering the number of offenses punishable by death in the Draft Bill 2012. If you made a comparative scale, an offense which carries capital punishment in the Criminal Code that applies right

now there are only 10 chapters, while in Draft Penal Code contained 17 articles that include the capital punishment in his offense (see table).

**Table 1.**  
**Articles Comparison of Criminal Dead in the Criminal Code and the Criminal Code Bill**

No.	The Criminal Code	Criminal Act	The Criminal Code Bill	Criminal Act
1	Article 104	Treason against the head of State	Article 242	Terrorism
2	Section 110 subsection (1) and (2)	Conspiracy to commit a crime under article 104, 106, 107 and 108	Article 244	Terrorism with the use of chemicals
3	Article 111 paragraph (2)	Prepare or facilitate the crime in article 104, 106, 108 and	Article 247	Plan or move the others to commit acts of terrorism
4	Article paragraph 124 (3) numbers 1 and 2	Do relations with a foreign country so war	Article 249	Provide assistance, ease, facility, or description for acts of terrorism
5	Article 140 paragraph (3)	Treason let the enemy in time of war	Article 250 paragraph (2)	The expansion of criminal terrorism
6	Article 185	Abet and facilitate the occurrence of riots	Article 251	Conspiracy, preparation, or trial and assisting terrorism
7	Article 340	The assassination plan against the head of the country's best friends	Article 262	Deeds jeopardize flight safety
8	Article 365 verses (4)	Robs life of parties opposed to or injure her body in a fight fights	Article 269 paragraph (2)	Treason against the head of the foreign countries
9	Article 444	The murder plan	Article 506 paragraph (2)	The abuse of narcotic drugs
10	Article 479 of the letter k, paragraph (2) and the letter o para (2)	Theft with violence in an Alliance that resulted in severe injuries or die	Article 507 paragraph (2)	The abuse of narcotic drugs
11		Piracy at sea resulting in death	Article 509 paragraph (2)	The abuse of narcotic drugs
12		Flight means a flight and crime	511 article paragraph (2)	The abuse of narcotic drugs
13			512 article paragraph (2)	The abuse of narcotic drugs
14			Article 514 paragraph (2)	The abuse of narcotic drugs
15			Article 523	The abuse of psychotropic substances
16			Article 581	The murder plan
17			Article 699	Corruption

### THEORY OF JUSTICE DIGNITY

These theories related to issues around the rights and freedom, power, income and prosperity. Moreover, justice is in reality the terminology analogue and can be used in diverse contexts, hence the various terms such as "procedural fairness", "justice le-

galist", "fairness corrective", "commutative justice", "distributive justice," "fairness substantive "and etc. Friedrich (2004) said efforts to bring about justice in law is a dynamic process and takes a lot of time. In fact, such efforts are often dominated by the forces



competing in the general framework of political order to actualize.

Theories of natural law (Huijbers, 1995) has put a crown of justice as the law and always put "the search for justice". Rawls (2001), there are two basic principles of justice must be applied to the basic structure of society, as follows: "(a) Every person has a claim undisputed similar to a scheme which is completely inadequate from the basic freedoms equivalent (equal basic liberty), in which the scheme is compatible with the freedom of the same scheme for all; (b) social and economic inequalities are to satisfy two conditions; first, employment opportunities and specific positions should be open to all under the conditions of fair equality of opportunity; second, provide the greatest benefit to the most disadvantaged groups (the principle of distinction / difference principle)".

Whereas Marsudi (2003) states the basic philosophy of Pancasila as the state has included the doctrine of fairness. The principle of fairness is reflected in the second principle of Pancasila, namely "fair and civilized humanity." The word justice implies that decisions and actions are based on the size / norms are objective and not subjective, so it is not arbitrary. Furthermore Marsudi said that the principle of fairness is also regulated in the fifth principle of Pancasila, namely "social justice for all Indonesian people." Social justice is justice prevailing in the deliberations in all areas of life, both material and spiritual. The meaning of social justice also includes the notion of a fair and prosperous. Justice demands include compliance essential for physical and spiritual life of material and spiritual or human, that for all Indonesian people evenly based on the principle of kinship.

According to Prasetyo and Barkatullah (2012), Pancasila as the fundamental norm of the state (*staatsfundamentalnorm*) and ideals of law (*rechtsidee*) is a guiding star in the development, application and implementation of laws in Indonesia. Thus, the establishment and enforcement in Indonesia should be based on the values of justice Pancasila which requires a balance between the rights and obligations of man. The consequences of the equity value of this is that the law must be able to satisfy the principle of certainty of justice, so that all citizens obtain equal treatment under the law.

#### THE THEORY OF CRIMINALIZATION

The use of the criminal as a means of crime prevention is done through the criminal law policy. Al-

though the policy of the criminal law is a matter that is commonly done by many countries, but it does not mean the issue as something that can be done without a fundamental consideration. In this context, Packer (1968) wrote about criminalization it as necessary, but it remains regrettable as one form of social control because it contains suffering criminal. According to Gross (1979), the law that imposed it is imperative that regrettably, due to the imposition of a criminal cause of suffering, it is necessary to look for a justification and basis.

Utrecht (1958) and Purnomo (1985), classify the theory criminalization, namely the absolute theory or the theory of retaliation (*vergeldings Theorien*), the relative theory or the theory of objective (*doel Theorien*), and the combined theory (*verenigings Theorien*). While Muladi (2002) divides the theory of the purpose criminalization into three (3) groups, namely the theory of retributive, teleological theory and the theory of retributive-teleological.

Indonesian criminal justice system can be said to be closer to this goal theory. This is evidenced by the development of the theory of penal and correctional system are then implemented in Law 12 of 1995 on Correctional System. From the formulation of the Criminal Code bill also looks closeness the idea with the theory of relative (Article 54 of the Criminal Code Bill, 2005).

#### THE THEORY OF LEGAL CERTAINTY

The principle of legal certainty in a legal system has the form and position. In terms of shape, the principle of legal certainty is composed of two kinds, namely the principle of legal certainty in the formal sense and the principle of legal certainty in the material sense. The principle of law in the formal sense is a decision issued must be sufficiently clear for the concerned. This means that every legal decision must be clear according to the contents of the formulation and understanding and not rely on the interpretation of others (Hamidi, 1999).

Otto (Moeliono, 2003) expanding the definition of legal certainty into five aspects, namely: (1) the availability of the rules clear, consistent and easily accessible; (2) applied by the agency consistently authorities; (3) received by most residents by adjusting their behavior; (4) is applied by judges in the settlement of disputes; and (5) the implementation of court decisions in concrete terms. Bruggink (1999) said that the principle of legal certainty is the foundation, the rules of assessment and the highest legal norms in a legal system to measure and assess the

extent to which certainty of a decision that is used in a legal system.

The principle of legal certainty also occupies an important position in a legal system when legal practitioners-lawyers, judges, police-determine one's status in law. In the context of this study, the principle of legal certainty is important to be used as a lens to look at the extent to which the determination of the deadline for execution capital punishment in Indonesia has provided a framework for the certainty of death row inmates.

### **THE THEORY OF HUMAN RIGHTS**

Locke (1946) states that human rights are the rights given directly by God the Creator as a natural right. Locke states that individuals endowed by nature inherent right to life, liberty and property that belonged to their own and can not be relocated or revoked by state.

Human rights are a privilege, the right to have because someone is a human being. Human rights are the highest moral rights and has an important political role (Donnelly, 1990). According Burgers (in Donnelly, 1990), human rights are always responding to problems that are universal, namely the imbalance of power relations between individuals and the state

In the Indonesian context, implementation of human rights has been reflected in the Preamble of the 1945 Constitution and the torso which became the basis of the written law and references to any rule of law in Indonesia. After the second amendment of the 1945 Constitution, the provisions on human rights has gained a solid place in the Indonesian constitution. Article 28A of the 1945 Constitution stated, "Every person shall have the right to live and to defend his/her life and existence" Furthermore, Article 28 paragraph (1) states, "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances".

Therefore, the teaching of human rights based on Pancasila inspired and based on the principle of normative-religious theism: (1) That human rights is a gift and grace of the Creator at the same mandate to be enjoyed and regarded by mankind; (2) That the upholding of human rights is always based on the principle of balance with human obligation (KAM).

It means that the human rights will stand only due (race) human obligations as a human fulfill the mandate of the Creator, as the moral integrity of human dignity; (3) The obligation of human (KAM) based on Pancasila are: (a) A person must acknowledge the source (the human rights: life, liberty, property) is God the Creator (sila I) which confers and mandates potential physical-spiritual personality as the dignity of the noble humanity; (b) A person must acknowledge and accept the sovereignty of the Creator of the universe, including on the fate and destiny of man; (c) A person must be grateful and submissive to the Creator for the gift and the mandate entrusted to personality of man. Thus, the establishment of the human rights doctrine is essentially determined by the balance between the human rights and the establishment of Human Obligations (Prasetyo and Barakatullah, 2012)

### **RESEARCH METHODOLOGY**

This type of research is a normative legal research or dogmatic law research. Thus, the normative legal research (Amiruddin and Asikin, 2006) includes a study of the principles of law, the systematic study of the law, research on vertical and horizontal synchronization phases, comparative law and legal history.

This writing method approach to legislation (statute approach), the case approach and the comparative approach. Data collection techniques in this research is the study of library research, which is based on literature research literature.

In accordance with the approach used in this study, the source of the data used is secondary data which will be obtained through literature sources, including primary source or authorities, the law of secondary source material or authorities and tertiary legal materials. The data has been processed will be interpreted by the method of legal interpretation and construction of laws that have been prevalent in the science of law, then analyzed qualitatively in the presentation that is judicial normative.

### **RESULTS AND DISCUSSION**

#### **EXECUTION DEADLINE CONVICTED OF DEAD IN INDO- NESIAN JUSTICE SYSTEM**

McRae (2012) noted that until 2012 there were 134 death sentences have been imposed under the democratic government, 72 of them for drug crimes, more than 54 for murder and eight for terrorism. On the other side, data released by the General Crime Division Sunproglanpil The Attorney General per-

December 20, 2012 showed that the number of death row as many as 133, in which the narcotic crime were the highest, which is 71 people or 53.38%, the crime of murder second place, as many as 60 people

or 45.12%, and the crime of terrorism ranks third, as many as 2 or 1.50%. From that number there are still in the stage of an appeal, cassation, judicial review and clemency.

**Table 2.**  
**Number of Convict Death Based on Types of Crime period of January s.d. December 2012**

No.	Criminal Acts Type	Total Convicts Dead	Description
1	Narcotics	71 orang	Other General Crimes
2	Terrorism	2 orang	The State Security and Public order
3	Homicide	60 orang	People and Possessions
	Total	133 orang	

Source: Sunproglanpil the field of General Crime Attorney General RI per-December 20, 2012.

In actual fact, not all death row inmate who has obtained permanent legal force has been executed. Since 1998, executions were sporadic, almost half of the execution was concentrated in 2008 and after it appeared the period in which none of the executions carried out by the government (Araf, *et al.*, 2012). After a "moratorium unofficial" for five years that is since 2008 Indonesia once again carry out executions in 2013 against four death row criminal cases of drug trafficking and murder in March and May

2013 (In contrast, in 2013; Amnesty, 2013; Jakarta Globe, 2014)). Nevertheless, in terms of absolute numbers, the application of capital punishment in Indonesia is small compared with many other countries that also maintains the death penalty. America, for example, has conducted 43 executions in 2011 (Amnesty International, 2012), while Indonesia only carry out 28 executions since 1998

**Table 3.**  
**The Dead Convict That Has Executed From the 1998 - 2013**

Year	Name of Convicts Dead	Cases
	Muhammad Abdul Hafeez (Pakistan)	Drugs (Banten)
	Suryadi Swabuana alias Adi Kumis	Premeditated murder(Sumsel)
2013	Jurit bin Abdullah	Premeditated murder (Sumsel)
	Ibrahim bin Ujang	Premeditated murder (Sumsel)
	M. Adami Wilson alias Abu (Malawi)	Drugs (Banten)
2012	Tidak ada	
2011	Tidak ada	
2010	Tidak ada	
2009	Tidak ada	
	Amrozi	Terrorism (Jateng)
	Imam Samudera	Terrorism (Jateng)
	Muklas	Terrorism (Jateng)
	Rio Alex Bullo	Premeditated murder (NTT)
	Usep alias TB Yusuf Maulana	Premeditated murder (Banten)
2008	Sumiarsih	Premeditated murder (Jatim)
	Sugeng	Premeditated murder (Jatim)
	Ahmad Suraji alias Dukun AS	Premeditated murder (Sumut)
	Samuel Iwuchukwu Okoye (Nigeria)	Drugs (Banten)
	Hansen Anthony Nwaliosa (Nigeria)	Drugs (Banten)
2007	Ayub Bulubili	Premeditated murder (Kalteng)

Year	Name of Convicts Dead	Cases
2006	Fabianus Tibo	Premeditated murder (Sulteng)
	Marinus Riwu	Premeditated murder (Sulteng)
	Dominggus Dasilva	Premeditated murder (Sulteng)
2005	Astini	Premeditated murder (Jatim)
	Turmudi	Premeditated murder (Jambi)
	Ayodya Prasad Chaubey (India)	Drugs (Sumatera Utara)
2004	Saelow Prasad (India)	Drugs (Sumatera Utara)
	Namsong Sirilak (Thailand)	Drugs (Sumatera Utara)
2003	Tidak ada	
2002	Tidak ada	
2001	Gerson Pande	Pembunuhan (Nusa Tenggara Timur)
	Fredrik Soru	Pembunuhan (Nusa Tenggara Timur)
	Dance Soru	Pembunuhan (Nusa Tenggara Timur)
2000	Tidak ada	
1999	Tidak ada	
1998	Adi Saputra	Pembunuhan (Jatim)

Source: Adapted from Amnesty International (2007-2013); Contrast (2007) and Wikipedia (2013)

Custody of capital punishment in principle have the same access to the appeals process, an appeal and judicial review as prisoners. If the appeal to the High Court and an appeal to the Supreme Court failed, they can ask for judicial review (PK) to the Supreme Court and apply for clemency to the President. Death row inmate can obtain clemency after receiving the decision of the President and the consideration of the Supreme Court. The clemency petition filed through the Office of Penitentiary to the Directorate General Penitentiary, and then to the Secretary of State and the Supreme Court, now awaits approval from the President.

After capital punishment was decided at the stage of judicial review, the possibility of a change or reduction of sentence at the stage of clemency very flimsy. Nevertheless, it does not mean sentenced to death are automatically executed when a request for clemency was rejected. Indonesian law does not stipulate a time limit when the execution should be carried out. Only in a few cases to immediately implement an Indonesian court after the execution of death sentences imposed or death row clemency petition rejected

Nevertheless, in practice the executions against convicts who have obtained a legally binding decision is often delayed for years. In this context, there are several factors that inhibit or delay the execution of capital punishment against the convict who has received legal decisions remain. *First*, the law does not set a limit for the submission of judicial review

for the convict. Criminal Procedure Code does not provide strict deadlines related to the submission of judicial review in criminal cases. This is in contrast with civil cases, where the filing deadlines prescribed judicial review 180 days after the decision is legally enforceable (*inkracht*).

Second, in the judicial practice, the application for judicial review may be filed more than once. In the Indonesian legal system, judicial review is an attempt supreme law, where there are no longer above the law attempts judicial review. In Article 268 paragraph (3) Code of Criminal Procedure states that "Request for reconsideration of a decision can only be done one time only." However, in judicial practice, judicial review may be filed several times, so it is used convicts to file an judicial review for both time. The practice of the submission of judicial review many times later reinforced by the Constitutional Court, which states that Article 268 paragraph (3) Criminal Procedure Code contains provisions judicial review the submission of only one contrary to the Constitution of 1945 and does not have binding legal force

Third, the law does not set the interval between judicial review of the first, with the subsequent judicial review. As a result, when the first judicial review was rejected while the legislation provides opportunities for convicts to apply for judicial review subsequent, then an executioner would not necessarily be able to carry out the execution. If the executor executed after the fall judicial review first, while the



legislation provides an opportunity for judicial review subsequent, means the convicted person has eliminated some of the rights to justice. The absence of rules relating to the interval between the first judicial review with subsequent judicial review This will ultimately further hamper and delay the execution of the convict

Determination of the deadline for execution for 10 years for death row inmates who have obtained a court decision that is legally binding and or request for clemency was rejected by the president is part of the implementation of justice restorative at the stage of post-sentence (post-sentence) and correction (correction) , This approach is especially important for perpetrators of criminal acts of murder, in which guardianship (outside the law) for his actions greatly depend on the response of the victim's family. If the waiting period of execution or in terms of the Criminal Code draft "probation" for 10 (ten) years was convicted of obtaining forgiveness from the victim's family, then he can obtain criminal alternatives in the form of imprisonment for life or imprisonment for 20 (twenty) years. However, if within that period the victim's family was not willing to grant a pardon against death row, the execution must be carried out after the death against a court decision which is legally binding.

#### **THE EXECUTION METHOD CONVICT DEATH IN THE IN- DONESIAN JUSTICE SYSTEM**

Based on Presidential Decree of the Republic of Indonesia No. 2 of 1964 on the Implementation of the Criminal Procedure Off The Dropped by the Court in General and Military Courts. Changes that occur due to the provisions concerning the implementation of of capital punishment as specified in Article 11 of the Criminal Code deemed no longer suitable to the development of the state as well as the soul of the Indonesian revolution. Under the Presidential Edict No. 2 In 1964, the implementation of the of capital punishment carried out by being shot dead in an area where the law court passed a decision in the first instance. The Presidential Edict No. 2 1964 is then through the State Gazette 1964 No. 38 converted into Law No. 2 / Pnps / 1964. Through Law No. 2 / Pnps / 1964 stipulated that the implementation of the criminal is no longer by hanging by an executioner, but by being shot to death by a firing squad. The capital punishment is also in accordance with the provisions require to be implemented in certain places and not in public unless stipulated otherwise by the President.

Under the provisions of Act No. 2 / Pnps / 1964 above, the party responsible for carrying out executions are the Chief of Regional Police. Responsibility referred to, among others, determine the time and place of execution of of capital punishment, are responsible for security and order during the execution of of capital punishment as well as providing personnel and tools necessary for it. Power in question is to form a firing squad consisting of an NCO (now Brigadier), twelve enlisted men under the command of an officer, which are all derived from the Mobile Brigade (Brimob INP). The entire process of execution of of capital punishment is under the command Attorney responsible for the implementation of the of capital punishment until the implementation is complete (Sahetapy, 1982).

#### **DEATH IN INDONESIAN CRIMINAL POLICY ON THE FUTURE**

The policy direction of capital punishment of law in Indonesia in the future will not be shifted away from the current state. This conclusion is based on the following reason. First, of capital punishment normatively still recognized in national legal systems and formal legally enforced in various legislations. Second, the Constitutional Court (MK) as a guard and sole interpreter of the Constitution states that of capital punishment is not contrary to Pancasila and the 1945 Constitution and therefore should be maintained and applied in Indonesia. Third, Indonesia has not ratified various international legal instruments relating to the abolition of of capital punishment except the ICCPR are not explicitly prohibit the application of of capital punishment. Fourth, the awareness of the history of the people of Indonesia have not been able to accept the abolition of of capital punishment and the Indonesian people still recognize of capital punishment as a morally legitimate.

Thus, in a few years, Indonesia will remain a retentionist countries which apply the capital punishment as a form of criminal law. Nevertheless, the application of of capital punishment in the future will experienced a few adjustments and treated as a special crime which is applied carefully and selectively to cases of capital offenses or extraordinary crimes.

#### **CONCLUSION**

Based on the description that has been described in previous chapters, the research found some conclusions as follows:

1. The criminal justice system in Indonesia, do not set the deadline for execution against death row inmates who had obtained a court decision that

is legally binding and or death row inmates for clemency petition had been rejected by the President.

2. The method of execution is implemented in Indonesia is the method was shot dead by firing squad as stipulated in Act No. 2 / Pnps / 1964 on Procedures for Execution of Criminal Dead imposed by the Court in General and Military Courts
3. The method of execution is implemented in Indonesia is the method was shot dead by firing squad as stipulated in Act No. 2 / Pnps / 1964 on Procedures for Execution of Criminal Dead imposed by the Court in General and Military Courts.

## RECOMMENDATIONS

Conclusion based on the above, the authors propose some suggestions as follows:

1. The Government and the parliament should formulate provisions on the deadline for execution of the death row inmate who has received a court decision which is legally binding and or death row for clemency petition was rejected by the President by way of revising and adding a special clause in the Criminal Code relating to the provision.
2. Act No. 2 / Pnps / 1964 needs to be revised by entering a special article on the procedure by firing squad on death row who have knowledge invulnerable and implement a system of public disclosure in executions for the purpose of legal preventive and deterrent effect can be fulfilled.
3. As the country that upholds the values of human rights, in the future of Indonesia should impose capital punishment as a special punishment is applied carefully and selectively to cases of capital offenses or extraordinary crimes.

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